

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9739 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

LAKHIBEN W/O HARISHBHAI KARSHANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. Petitioner - detenue Lakhiben w/o Harishbhai Karshanbhai Patel came to be detained by virtue of an order passed on September 12, 1999 by Commissioner of Police, Surat City, Surat, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

#. The petitioner was branded as "bootlegger". The detaining authority took into consideration eight offences registered against the detenue and statements of two anonymous witnesses in respect of the incidents dated April 25, 1999 and June 22, 1999. The detaining authority found that the activities of the detenue are detrimental to public order and she is required to be immediately prevented from pursuing her illegal and anti-social activities. That she is required to be detained under the PASA Act as action under other ordinary laws may not prove to be efficacious.

#. The petitioner challenges the order of detention on various grounds. Ms. Subhadra Patel, learned advocate appearing for the petitioner submitted that there is delay in passing the order. She submitted further that there is non application of mind on the part of the detaining authority because the grounds of detention indicate that the registered cases considered by the detaining authority are pending trial whereas the index supplied by the sponsoring authority indicates that most of the cases are pending investigation. She further submitted that the statements of important witnesses have not been supplied to the detenue which has affected the right of the detenue of making an effective representation. She submitted further that FSL report in respect of the cases registered against the detenue has not been supplied to the detenue. This has also affected the right of the detenue of making an effective representation. She therefore submitted that the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He submitted that there is no delay on the part of the detaining authority. The statements are verified on September 10, 1999 and the order is passed on September 12, 1999. As regards non-supply of documents, Mr. Dave submitted that an attempt is made to mislead the Court by stating that statements have not been supplied. He has taken this Court through the compilation and copies of the charge sheets to indicate that the witnesses whose statement are claimed to have been not supplied are the witnesses who are the Investigating Officers and as such, there is no question of any statements of these witnesses. In respect of CR No. 236/99, it was urged by Ms. Patel, that statement of Virsing Khattu is not supplied. On perusal of the said charge sheet, it is found that that Virsing Khattu is not a witness at all. So far as non-supply of FSL report is concerned, Mr. Dave submitted that no demand is made for

supply of FSL report. To this submission, Ms. Patel concedes. Mr. Dave, therefore, submitted that the petition may therefore, be dismissed.

#. Considering the rival side contentions, it must be noted that disturbingly an attempt is made to mislead the Court on behalf of the petitioner. It was urged that statement of Virsing Khatu in respect of CR No. 236/99 has not been supplied. A perusal of the charge sheet indicates that Virsing Khatu is not even stated as witness. There cannot be any explanation to this and there is none coming from the learned advocate for the petitioner. Likewise, in respect of CR No. 29/98 and 47/99, it was urged that statement of Ramesh Manda is not supplied. In fact, Ramesh Manda is the Investigating Officer. In the case of CR 199/99, it was urged that the statement of Ashok Ranu is not supplied whereas Ashok Ranu is the Investigating Officer. Likewise in CR No. 96/99, Ratilal and in CR No. 153/99 Chimanbhai Jamlabhai are the Investigating Officer and it was urged that their statements have not been supplied. Thus, an incorrect statement getting no support from the material on record is made in an attempt to make out a case in favour of the detainee. This leaves open a question for the Court how far to rely on statement made at the bar and what action to take if such a statement is found to be incorrect or misleading. This question can be addressed at a later point of time.

#. Coming to the merits of this petition, it may be noted that the sponsoring authority made a proposal on June 30, 1999. The said proposal was tendered before the Dy. Commissioner of Police on that very day. Dy. Commissioner of Police forwarded the same to Commissioner of Police on 27th July, 1999. The statements came to be verified on 10th September, 1999 and the order came to be passed on 12th September, 1999. Thus, proposal of 30th June, 1999 came to be attended for the first time somewhere around 10th September, 1999 and acted upon on 12th September, 1999. This time gap (delay) is not explained by the detaining authority. No affidavit-in-reply is filed. The result is that the detaining authority's subjective satisfaction regarding need for immediate prevention of the detainee from pursuing her illegal and anti-social activities and immediate need for detaining her under the PASA Act cannot be considered as genuine. This would vitiate the order of detention as the delay is inordinate and no attempt is made to explain the same. The petition, therefore, deserves to be allowed on this ground.

#. Now, reverting to the question regarding incorrect and misleading statements having been made by learned advocate for the petitioner and action required to be taken thereunder, this Court is of the view that the act on the part of the learned advocate for the petitioner calls for a serious consideration. Taking of a ground on the basis of an incorrect fact reflects a result oriented approach and an irresponsible behaviour on the part of the learned advocate for the petitioner.

#. At this stage, Ms. Patel tenders an oral apology and assures the Court that such incident will not recur in future. Taking a liberal view at this stage, while accepting the apology tendered by learned advocate for the petitioner, now this Court does not propose to take any action, in view of the apology tendered by learned advocate for the petitioner.

#. For the reasons stated above, the petition is allowed. Impugned order of detention dated September 12, 1999 is hereby quashed and set aside. The detenue Lakhiben, W/o. Harishbhai Karshanbhai Patel is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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